



General Assembly

February Session, 2012

Raised Bill No. 247

LCO No. 1227

01227_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

***AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS
WHOSE ABILITY TO COMMUNICATE LACK OF CONSENT IS
SUBSTANTIALLY IMPAIRED.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 53a-71 of the 2012 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective October 1, 2012*):

4 (a) A person is guilty of sexual assault in the second degree when
5 such person engages in sexual intercourse with another person and: (1)
6 Such other person is thirteen years of age or older but under sixteen
7 years of age and the actor is more than three years older than such
8 other person; or (2) [such other person is mentally defective to the
9 extent that such other person is unable to consent to such sexual
10 intercourse; or (3) such other person is physically helpless] the ability
11 of such other person to communicate lack of consent to such sexual
12 intercourse is substantially impaired because of a mental or physical
13 condition and the actor knows or has reasonable cause to believe that
14 the ability of such other person to communicate lack of consent to such
15 sexual intercourse is so impaired; or [(4)] (3) such other person is less

16 than eighteen years old and the actor is such person's guardian or
 17 otherwise responsible for the general supervision of such person's
 18 welfare; or [(5)] (4) such other person is in custody of law or detained
 19 in a hospital or other institution and the actor has supervisory or
 20 disciplinary authority over such other person; or [(6)] (5) the actor is a
 21 psychotherapist and such other person is (A) a patient of the actor and
 22 the sexual intercourse occurs during the psychotherapy session, (B) a
 23 patient or former patient of the actor and such patient or former
 24 patient is emotionally dependent upon the actor, or (C) a patient or
 25 former patient of the actor and the sexual intercourse occurs by means
 26 of therapeutic deception; or [(7)] (6) the actor accomplishes the sexual
 27 intercourse by means of false representation that the sexual intercourse
 28 is for a bona fide medical purpose by a health care professional; or [(8)]
 29 (7) the actor is a school employee and such other person is a student
 30 enrolled in a school in which the actor works or a school under the
 31 jurisdiction of the local or regional board of education which employs
 32 the actor; or [(9)] (8) the actor is a coach in an athletic activity or a
 33 person who provides intensive, ongoing instruction and such other
 34 person is a recipient of coaching or instruction from the actor and (A)
 35 is a secondary school student and receives such coaching or instruction
 36 in a secondary school setting, or (B) is under eighteen years of age; or
 37 [(10)] (9) the actor is twenty years of age or older and stands in a
 38 position of power, authority or supervision over such other person by
 39 virtue of the actor's professional, legal, occupational or volunteer
 40 status and such other person's participation in a program or activity,
 41 and such other person is under eighteen years of age; or [(11)] (10)
 42 such other person is placed or receiving services under the direction of
 43 the Commissioner of Developmental Services in any public or private
 44 facility or program and the actor has supervisory or disciplinary
 45 authority over such other person.

46 (b) Sexual assault in the second degree is a class C felony or, if the
 47 victim of the offense is under sixteen years of age, a class B felony, and
 48 any person found guilty under this section shall be sentenced to a term
 49 of imprisonment of which nine months of the sentence imposed may

50 not be suspended or reduced by the court.

51 Sec. 2. Section 53a-73a of the 2012 supplement to the general statutes
52 is repealed and the following is substituted in lieu thereof (*Effective*
53 *October 1, 2012*):

54 (a) A person is guilty of sexual assault in the fourth degree when: (1)
55 Such person intentionally subjects another person to sexual contact
56 who is (A) under thirteen years of age and the actor is more than two
57 years older than such other person, or (B) thirteen years of age or older
58 but under fifteen years of age and the actor is more than three years
59 older than such other person, or (C) [mentally defective or mentally
60 incapacitated to the extent that such other person is unable to consent
61 to such sexual contact, or (D) physically helpless] a person whose
62 ability to communicate lack of consent to such sexual contact is
63 substantially impaired because of a mental or physical condition and
64 the actor knows or has reasonable cause to believe that the ability of
65 such other person to communicate lack of consent to such sexual
66 contact is so impaired, or [(E)] (D) less than eighteen years old and the
67 actor is such other person's guardian or otherwise responsible for the
68 general supervision of such other person's welfare, or [(F)] (E) in
69 custody of law or detained in a hospital or other institution and the
70 actor has supervisory or disciplinary authority over such other person;
71 or (2) such person subjects another person to sexual contact without
72 such other person's consent; or (3) such person engages in sexual
73 contact with an animal or dead body; or (4) such person is a
74 psychotherapist and subjects another person to sexual contact who is
75 (A) a patient of the actor and the sexual contact occurs during the
76 psychotherapy session, or (B) a patient or former patient of the actor
77 and such patient or former patient is emotionally dependent upon the
78 actor, or (C) a patient or former patient of the actor and the sexual
79 contact occurs by means of therapeutic deception; or (5) such person
80 subjects another person to sexual contact and accomplishes the sexual
81 contact by means of false representation that the sexual contact is for a
82 bona fide medical purpose by a health care professional; or (6) such

83 person is a school employee and subjects another person to sexual
 84 contact who is a student enrolled in a school in which the actor works
 85 or a school under the jurisdiction of the local or regional board of
 86 education which employs the actor; or (7) such person is a coach in an
 87 athletic activity or a person who provides intensive, ongoing
 88 instruction and subjects another person to sexual contact who is a
 89 recipient of coaching or instruction from the actor and (A) is a
 90 secondary school student and receives such coaching or instruction in
 91 a secondary school setting, or (B) is under eighteen years of age; or (8)
 92 such person subjects another person to sexual contact and (A) the actor
 93 is twenty years of age or older and stands in a position of power,
 94 authority or supervision over such other person by virtue of the actor's
 95 professional, legal, occupational or volunteer status and such other
 96 person's participation in a program or activity, and (B) such other
 97 person is under eighteen years of age; or (9) such person subjects
 98 another person to sexual contact who is placed or receiving services
 99 under the direction of the Commissioner of Developmental Services in
 100 any public or private facility or program and the actor has supervisory
 101 or disciplinary authority over such other person.

102 (b) Sexual assault in the fourth degree is a class A misdemeanor or,
 103 if the victim of the offense is under sixteen years of age, a class D
 104 felony.

105 Sec. 3. Section 53a-65 of the general statutes is repealed and the
 106 following is substituted in lieu thereof (*Effective October 1, 2012*):

107 As used in this part, except section 53a-70b, the following terms
 108 have the following meanings:

109 (1) "Actor" means a person accused of sexual assault.

110 (2) "Sexual intercourse" means vaginal intercourse, anal intercourse,
 111 fellatio or cunnilingus between persons regardless of sex. Its meaning
 112 is limited to persons not married to each other. Penetration, however
 113 slight, is sufficient to complete vaginal intercourse, anal intercourse or

114 fellatio and does not require emission of semen. Penetration may be
115 committed by an object manipulated by the actor into the genital or
116 anal opening of the victim's body.

117 (3) "Sexual contact" means any contact with the intimate parts of a
118 person not married to the actor for the purpose of sexual gratification
119 of the actor or for the purpose of degrading or humiliating such person
120 or any contact of the intimate parts of the actor with a person not
121 married to the actor for the purpose of sexual gratification of the actor
122 or for the purpose of degrading or humiliating such person.

123 [(4) "Mentally defective" means that a person suffers from a mental
124 disease or defect which renders such person incapable of appraising
125 the nature of such person's conduct.]

126 [(5)] (4) "Mentally incapacitated" means that a person is rendered
127 temporarily incapable of appraising or controlling such person's
128 conduct owing to the influence of a drug or intoxicating substance
129 administered to such person without such person's consent, or owing
130 to any other act committed upon such person without such person's
131 consent.

132 [(6) "Physically helpless" means that a person is unconscious or for
133 any other reason is physically unable to communicate unwillingness to
134 an act.]

135 [(7)] (5) "Use of force" means: (A) Use of a dangerous instrument; or
136 (B) use of actual physical force or violence or superior physical
137 strength against the victim.

138 [(8)] (6) "Intimate parts" means the genital area or any substance
139 emitted therefrom, groin, anus or any substance emitted therefrom,
140 inner thighs, buttocks or breasts.

141 [(9)] (7) "Psychotherapist" means a physician, psychologist, nurse,
142 substance abuse counselor, social worker, clergyman, marital and
143 family therapist, mental health service provider, hypnotist or other

144 person, whether or not licensed or certified by the state, who performs
145 or purports to perform psychotherapy.

146 [(10)] (8) "Psychotherapy" means the professional treatment,
147 assessment or counseling of a mental or emotional illness, symptom or
148 condition.

149 [(11)] (9) "Emotionally dependent" means that the nature of the
150 patient's or former patient's emotional condition and the nature of the
151 treatment provided by the psychotherapist are such that the
152 psychotherapist knows or has reason to know that the patient or
153 former patient is unable to withhold consent to sexual contact by or
154 sexual intercourse with the psychotherapist.

155 [(12)] (10) "Therapeutic deception" means a representation by a
156 psychotherapist that sexual contact by or sexual intercourse with the
157 psychotherapist is consistent with or part of the patient's treatment.

158 [(13)] (11) "School employee" means: (A) A teacher, substitute
159 teacher, school administrator, school superintendent, guidance
160 counselor, psychologist, social worker, nurse, physician, school
161 paraprofessional or coach employed by a local or regional board of
162 education or a private elementary, middle or high school or working in
163 a public or private elementary, middle or high school; or (B) any other
164 person who, in the performance of his or her duties, has regular
165 contact with students and who provides services to or on behalf of
166 students enrolled in (i) a public elementary, middle or high school,
167 pursuant to a contract with the local or regional board of education, or
168 (ii) a private elementary, middle or high school, pursuant to a contract
169 with the supervisory agent of such private school.

170 Sec. 4. Subsection (a) of section 53a-67 of the general statutes is
171 repealed and the following is substituted in lieu thereof (*Effective*
172 *October 1, 2012*):

173 (a) In any prosecution for an offense under this part based on the

174 victim's being [mentally defective,] mentally incapacitated, [or
175 physically helpless,] it shall be an affirmative defense that the actor, at
176 the time such actor engaged in the conduct constituting the offense,
177 did not know of such condition of the victim.

178 Sec. 5. Subdivision (2) of section 54-250 of the general statutes is
179 repealed and the following is substituted in lieu thereof (*Effective*
180 *October 1, 2012*):

181 (2) "Criminal offense against a victim who is a minor" means (A) a
182 violation of subdivision (2) of section 53-21 of the general statutes in
183 effect prior to October 1, 2000, subdivision (2) of subsection (a) of
184 section 53-21, subdivision (2) of subsection (a) of section 53a-70,
185 subdivision (1), [(4), (8) or (10)] (3), (7) or (9) or subparagraph (B) of
186 subdivision [(9)] (8) of subsection (a) of section 53a-71, as amended by
187 this act, subdivision (2) of subsection (a) of section 53a-72a, subdivision
188 (2) of subsection (a) of section 53a-86, subdivision (2) of subsection (a)
189 of section 53a-87, section 53a-90a, 53a-196a, 53a-196b, 53a-196c, 53a-
190 196d, 53a-196e or 53a-196f, (B) a violation of subparagraph (A) of
191 subdivision [(9)] (8) of subsection (a) of section 53a-71, as amended by
192 this act, or section 53a-92, 53a-92a, 53a-94, 53a-94a, 53a-95, 53a-96 or
193 53a-186, provided the court makes a finding that, at the time of the
194 offense, the victim was under eighteen years of age, (C) a violation of
195 any of the offenses specified in subparagraph (A) or (B) of this
196 subdivision for which a person is criminally liable under section 53a-8,
197 53a-48 or 53a-49, or (D) a violation of any predecessor statute to any
198 offense specified in subparagraph (A), (B) or (C) of this subdivision the
199 essential elements of which are substantially the same as said offense.

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| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | <i>October 1, 2012</i> | 53a-71 |
| Sec. 2 | <i>October 1, 2012</i> | 53a-73a |
| Sec. 3 | <i>October 1, 2012</i> | 53a-65 |
| Sec. 4 | <i>October 1, 2012</i> | 53a-67(a) |

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| Sec. 5 | October 1, 2012 | 54-250(2) |
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Statement of Purpose:

To provide that sexual intercourse or sexual contact with a person whose ability to communicate lack of consent to such sexual activity is substantially impaired because of a mental or physical condition constitutes the crime of sexual assault.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]